

EXHIBIT B

STATE OF ILLINOIS ILLINOIS COMMERCE COMMISSION

Amcor Flexibles, Inc.)	
-vs-)	11-0033
Commonwealth Edison Company)	
)	
Complaint pursuant to Section 9-250 and 10-108)	
of the Illinois Public Utilities Act and Section)	
200.170 of the Rules of Practice)	

RESPONDENT'S REPLY TO AMCOR'S RESPONSE ON RESPONDENT'S CROSS- MOTION FOR JUDGMENT ON THE COMPLAINT

Respondent, Commonwealth Edison Company ("ComEd"), respectfully submits the instant Reply to Amcor's Response on Respondent's Cross-Motion For Judgment on the Complaint, in accord with the Administrative Law Judge's schedule established on October 18, 2012.

I. BACKGROUND

On August 22, 2012, Amcor Flexibles, Inc. ("Amcor") filed a Motion for Judgment. Thereafter, on September 26, 2012, the Administrative Law Judge gave notice that:

Commonwealth Edison Company's response to the Motion for Judgment filed by Amcor Flexibles, Inc. is due on or before October 16, 2012. Amcor Flexibles, Inc.'s reply, if any, is due on or before November 2, 2012.

On October 16, 2012, Respondent filed a Cross-Motion for Judgment on the Complaint and further filed Respondent's Response in Opposition to the Complainant's Motion for Judgment and in Support of Cross-Motion for Judgment in Favor of the Respondent on the Complaint. Subsequently, on October 18, 2012, the Administrative Law Judge gave notice that:

Amcor Flexibles, Inc.'s response to the Cross-Motion for Judgment on the Complaint filed by Commonwealth Edison Company is due on or before November 2, 2012. Commonwealth Edison Company's reply, if any, is due on or before November 9, 2012.

On November 2, 2012, Amcor filed a Reply in Support of Its Motion for Judgment. Further, on November 5, 2012, Amcor filed a Response to ComEd's Cross-Motion for Judgment together with a Motion to File Response to ComEd's Cross-Motion for Judgment.

Here ComEd responds to Amcor's arguments in response to Respondent's Cross-Motion for Judgment on the entirety of the complaint. In ComEd's view, Amcor has attempted to complicate the billing issue at hand in every possible way. It persists in using the wrong terms and defining words in its own fashion, relies on law not pertinent to the circumstances and advances unreasonable arguments thereon. Because Amcor's complaint ultimately fails as a matter of law, judgment for Respondent is warranted in the instant premises.

II. AMCOR MISAPPREHENDS THE LAW

A. Introduction: Amcor Confuses the Commission's Rules

The Commission's rules provide for two different situations, to wit:

1. Section 410.200 applies where meter testing discloses certain inaccuracies (83 Ill. Adm. Code 410.200.
2. Section 280.100 applies where the customer has been unbilled or mis-billed for service. 83 Ill. Adm. Code.

As to the former, Section 410.200 applies where a meter is tested and found to be inaccurate, i.e., generally, this is when it is either under-registering or over-registering usage. While Amcor attempts to assert Section 410.200 as governing in this case, it has not ever analyzed or reasonably relied on its substantive provisions, i.e., subsections (a)-(g), or shown that any of these provisions apply to the pertinent facts in the instant situation. For its part, Amcor simply seizes on a single sentence in subsection (h)(1) in a failed attempt to raise claims of rule 410.200 violations. This clearly does not suffice to meet its burden.

In stark contrast, ComEd set out a summary of all the subsections that give meaning to Section 410.200. See Respondent's Cross Motion Support at 9-11. It further made clear that ComEd's notices to Amcor of the billing error were not, and has not been shown to be, based upon any of the situations contemplated in Rule 410.200. To the contrary, and from the very start, ComEd relied on Section 280.100 for its back-bill of Amcor. (Stip. Exhibit B). This rule addresses the situation of "unbilled service." 83 Ill. Adm. Code 280.100. It authorizes the back-bill of Amcor in these premises where a mistakenly programmed scaling factor did not correctly align itself with ComEd's billing software. From the very start, and at many times thereafter, ComEd has explained the workings of the meter, the significance of the different scaling factors, and how the scaling factors have no impact on measuring usage, and how meter accuracy tests will not uncover a incorrectly-programmed scaling factor. Amcor's persistent refusal to accept this explanation and to muddy the waters, does nothing to change this hard reality.

There is nothing in the Stipulation to show that the Replaced Meter failed accuracy at any time that it was tested or that ComEd back-billed Amcor on this basis.

The record only shows evidence to the contrary. Thus, Amcor's Motion for Judgment, based on mis-guided perceptions of Section 410.200 violations, fails on the law.

It is important to note at this juncture, that what Amcor seeks through its pleadings is complete and utter perfection at all times. The law, however, recognizes that innocent things sometimes do happen. Thus, if a meter itself is at fault - either over-registering or under-registering usage - Section 410.200 provides for billing adjustments. 83 Ill. Adm. Code 410.200. In a similar fashion, where inadvertent human error is involved, Section 280.100 provides for corrected billings albeit under a stricter timeframe. Both of these Commission rules operate on the same principle of fairness, i.e., that the customer pay no more, and no less, than what he, she, or it has obtained in services.

B. The Diagnostic Read of the Replaced Meter Showing the Scaling Error is Unchallenged.

Exhibit I to the Stipulation is the record that was generated when Thomas Rumsey ran a diagnostic read of the Replaced Meter. This was the evidence of the scaling factor error that prompted ComEd to give Amcor notice of the under-billing of its service. ~~But, at the same time, Amcor already knew something was amiss. Indeed, the record shows that the investigation that ComEd undertook and that led to Mr. Rumsey's testing and ultimate diagnostic read of the Replaced Meter (and his discovery of the scaling factor error) was solely owing to Amcor's complaint of an increase in billing after the Replaced Meter was removed and replaced with a different meter and later a subsequent meter. (See Stipulation, Exhibit B).~~

~~Amcor flatly ignores the basis for ComEd's investigation which showed both dramatic decreases in usage before the Replaced meter was installed and dramatic increases in usage after the Replaced Meter was removed. (Stip. Exhibit B at 1-2). This information, however, essentially corroborates the scaling factor error recorded in Exhibit I that resulted in the under-billing by ComEd and which wrongfully benefitted Amcor for so many years. (Id.)~~ Amcor has never challenged the particulars of Exhibit I in any way whatsoever. Instead, it has attempted to move the Commission onto an entirely different legal and factual track. As such, Amcor claims that there is no sense to ComEd's assertion, i.e., that meter accuracy is not the issue here. (Amcor Response at 3). Apparently, Amcor seems unable to grasp that there is a significant difference between meter accuracy testing and meter programming (which simply is not, and cannot be, "tested" for in the dictionary meaning of the word and hence is not provided for under the Commission rules).

C. Amcor's Preferred Definition of Meter "Accuracy" Does Not Meet with the Law

Amcor complains that the Replaced Meter was not tested in the particular way that it would have it be tested. More specifically, Amcor asserts that ComEd never bothered to "test" the internal billing memory of the Replaced Meter. (Amcor Response

at 5). According to Amcor, the billing memory is a critical part of the Replaced meter and if it is inaccurate, then the meter is inaccurate. (Id.)

Contrary to all that Amcor would suggest, it is the Commission, and not ComEd nor Amcor nor any lawyer that defines the term "accuracy" in relationship to meters. (Amcor Response at 1-2). By invoking the plain meaning rule, Amcor fails to understand that meter accuracy has a special meaning under the rules. To begin, Section 400.150 sets out in detail the Commission's *Meter Accuracy* requirements. 83 Ill. Adm. Code 410.150. Further, Section 410.170 sets out the particulars of the Commission's *Accuracy Testing* requirements. 83 Ill. Adm. Code 410.170. Finally, a definition for the term "accuracy" is derived from Section 410.200 where the rule specifies when certain findings, owing to a meter test, will or may require adjustments to a customer's billing. 83 Ill. Adm. Code 410.170. Regardless of how hard Amcor presses, *none* of these rules are at issue here as they do not concern ComEd's back-bill of Amcor. This is because the Replaced Meter tested accurate at all relevant times such that ComEd never had cause to make, and indeed did not make, the billing adjustments allowed for under Section 410.200 of the rule.

Most notably, neither of the situations that Section 410.200 (h)(1) specifies, i.e., over-registering usage or under-registering usage, was found in Mr. Rumsey's test of the meter on September 24, 2009. Indeed, as ComEd has explained, and as the record shows, it is because the Replaced Meter was found to be accurate that Mr. Rumsey performed a diagnostic examination on the Replaced Meter. Stip at 9, Para. 36. Then and only then, did he observe the mis-programmed scaling factor. See, Exhibit I. Clear on record too, it was on the basis of this scaling factor error - and not on accuracy testing of the Replaced Meter - that ComEd issued notice of a back-bill under Section 280.100 of the Commission's rules. (Stipulation, Exhibit B)

~~Further, no rule requires a "test" of a meter's internal billing memory as no such test exists. More directly, key to the matter at hand and as the record shows, only a diagnostic read - and not a meter accuracy test - will disclose a scaling factor error as found in this situation. In short, there is no merit to Amcor's complaint of a Rule 410.155 violation.~~

D. The Record Shows the Reason for the Back-Bill of Amcor under Section 280.100 of the Commission's Rules

Admittedly, the incorrect scaling factor that was programmed into the meter is of a technical nature and difficult to articulate. Amcor tries to take unfair advantage of this situation by challenging some of the language set out in ComEd's initial correspondence on December 8, 2009, that informed Amcor about the under billing of its service. (Amcor Response at 6). There is no merit, however, to what Amcor attempts to imply in its Response.

While the letter (written by a non-attorney and a non-technician) may have used the term "faulty" with reference to the Replaced Meter, the writer well explained what this word actually meant, i.e., that this particular meter "was programmed with incorrect scaling factor." (Exhibit B at page 2). In this same correspondence, where it was explained that these incorrect scaling factors thereby created "incorrect counts per revolution and altered the metered usage," there is also nothing amiss as Amcor would suggest. To be more precise, the writer might have better stated that the "incorrect counts per revolution and altered the *billing for metered usage*," and also better worded that "the meter did not register *for billing purposes* all of the usage flowing and under-billed Amcor's account by almost one-third." (Id.) (*emphasis on additions*). But, at bottom, Amcor has failed to show how this imprecision adversely affected Amcor. Indeed, Amcor cannot show this because there simply was no adverse affect.

~~Subsequent correspondence of record shows, consistent with this initial letter, that ComEd's back-bill of Amcor was due to the mis-programmed scaling error and not any accuracy test findings. See Stipulation, Exhibit D and Exhibit E. Moreover, the Stipulation, being last in time, sets out that the scaling factor error has no impact on the amount of power in the revolution of the virtual disk. (Stip. at 7, para. 29)~~

Hence, the record makes abundantly clear that usage was not, and is not, in any way affected by an erroneous scaling factor. It was only the billing for that usage that was in error and need of correction. Thus, ComEd properly back-billed Amcor pursuant to Section 280.100.

E. Regardless of When a Meter is Tested, a Programming Error Will Not Be Revealed.

~~Amcor makes much of ComEd's explanation that meters are programmed with scaling factors after the meter is tested for accuracy. (Amcor Response at 6, citing to Respondent's Cross-Motion Support at 5, 12, 15). According to Amcor, this information is not included in the Stipulation. (Id.)~~

~~In making this argument, Amcor overlooks the obvious. It is a matter of common sense, that neither ComEd nor any other entity would program a meter unless it is certain that, in the first instance, the meter has tested accurate. Moreover, Amcor's assertion that ComEd could "just as easily test meters" after programming is off-track, unsupported by the record, and proves nothing. (Amcor Response at 6).~~

~~As in many other instances, Amcor raises a red herring because, regardless of when a meter is accuracy tested, this standardized testing simply will not reveal a programming error such as were found through a diagnostic examination of the Replaced Meter. Hence, Amcor's arguments are unavailing.~~

F. Amcor Distracts From the Billing Issue with an Unreasonable Analysis

In an failed attempt to bring the scaling factor programming error found in the Replaced Meter under Section 410.200's provisions, Amcor strains to suggest that Section 410.150 and Section 410.200 (a),(b) and (d) may be applied some way to the instant set of facts.¹ (Amcor Reply at 8). As such, Amcor considers that for the meter billing error at issue, where ComEd informed Amcor that it was under-billed by approximately 66%, this should somehow relate, or might be compared to and found to exceed the 2% error threshold set out in these rules. (Id.).

There is absolutely nothing in the record, however, to show any of the situations that Section 410.150 or the select provisions of 410.200 address. Further, Amcor is wrong because it fails to accept as a threshold point (a) what meter accuracy actually means under the rule; and (b) either cannot, or refuses to grasp, that the basis for ComEd's back-bill of Amcor has no connection to meter accuracy or the meter accuracy rules. Amcor's arguments are simply an attempt to graft select portions of meter accuracy requirements onto unbilled service, which is a complete and utter mismatch that veers sharply into the realm of irrelevancy. Hence, the poorly thought-out analysis by Amcor derives an apples-to oranges comparison void of merit.

III. AMCOR'S CLAIMS OF A SECTION 410.155 VIOLATION ARE UNFOUNDED

A. Amcor suggests an admission that is not of record

Amcor had the burden to prove its theory of the case. Amcor claims that ComEd failed to conduct the "tests" required by Section 410.155 of the Commission's rules. 83 Ill.Adm.Code 410.155. Of course, the rule on which it relies speaks expressly of an installation "inspection" and not a meter accuracy "test" as per Section 410.150 or Section 410.155. Notably too, Amcor has not presented any testimony or argument to inform what actually occurs during this inspection nor has it shown that a post-installation inspection did not occur. Nor has Amcor ever made known what relevance the post-installation inspection has to the billing issue in this case.

Amcor relies on Paragraph 21 of the Stipulation which states, in full, that:

The Replaced Meter No. 140384879 was installed at Amcor's premises on or about August 1, 2005. ComEd performed a pre-installation *test* on the Replaced Meter on July 19, 2005. ComEd did not perform additional *testing* on the Replaced Meter prior to the Replaced Meter's removal from service for Amcor's account in April 2009. Whether this *testing* complied with the Commission's regulations is one of the major disputed issues in this docket. Stipulation at 6-7, para. 21.

Nowhere in the above paragraph 21 of the Stipulation is there any admission by ComEd that an "installation inspection" of Replaced Meter was not made. Nowhere is

¹ Amcor has not provided text, or analyzed the very rules on which it relies.

there even any mention of Section 410.155 in the Stipulation. So too, nowhere is there even a reference to a post-installation inspection. For certain, there is nothing in the whole of the Stipulation to show that a post-installation inspection was not performed. Amcor was a party and signatory to this Stipulation and has fervently maintained that it comprises the entirety of the record for decision and, further, it is raising the claim of a Section 410.155 violation. Yet, it has included no facts that bear on the issue.

Recognizing that the Stipulation cannot reasonably be construed in the way that Amcor would want, it contends that there is no meaningful distinction between a "test" of the meter and an "inspection." (Amcor Response at 3). The law, however, draws a distinction. For example, Section 410.155 of the rule speaks of "test" whereas Section 410.160 addresses "inspection." In the former, the rule requires specific meter testing at the meter shop and sets out accuracy tolerance levels. See 83 Ill. Adm. Code 410.150, 410.155. In the latter, there is no "test" of the meter as is performed under Section 410.155. Section 410.160 requires a field inspection "under load to determine if the meter is accurately measuring energy consumption." 83 Ill. Adm. Code 410.160. In other words, there is a substantive difference both in definition and application between the terms "test" and "inspection" that Amcor fails to comprehend.

B. No Presumption of a Rule 410.155 Violation is Appropriate in These Circumstances.

Because the Stipulation does not include records of the post installation inspection, Amcor argues that an unfavorable evidentiary presumption arises sufficient to establish, as a matter of law, that ComEd failed to conduct a post-installation test of the meter. (Amcor Response at 4).

There are several reasons why the presumption that Amcor asks for is inappropriate for this proceeding:

- (1) ComEd's back bill of Amcor relies on the diagnostic read of the Replaced Meter that Mr. Rumsey performed on September 24, 2009. (Stip. Exhibit I). It is this record evidence that shows the Replaced Meter to have been programmed with an incorrect scaling factor for its particular type.
- (2) The Replaced Meter was found, both pre-installation and upon removal, to be running accurately. Only after the Replaced Meter was tested did Mr. Rumsey perform the diagnostic read.
- (3) ~~Just as with standard meter testing, the post-installation inspection would not have shown the scaling factor error. Hence, the record of the inspection is wholly irrelevant to the billing issue.~~
- (4) Just as notably, if Amcor perceived that the installation inspection was relevant to its theory of the case, it would have asked ComEd to produce the report thereon and

attached same to the Stipulation, or if past the record retention period, made a record of its unavailability.

For all these reasons, and as further demonstrated below, the presumption fails merit.

C. The Section 410.155 Inspection is Not Relevant to the Billing Dispute.

Section 410.155 installation inspection has no bearing on the billing issue and Amcor has not shown otherwise. There is no evidence that a Section 410.155 inspection was not performed, but more importantly, ~~there is no evidence that it would have uncovered the scaling factor error. All the evidence is to the contrary.~~ In short, a Section 410.160 inspection, as it pertains to the meter, only checks that the meter, under load, is running accurately. ~~But, the only way to uncover the scaling factor is to perform a diagnostic examination.~~

~~By its very nature, no diagnostic read is, or can be a part of the installation inspection performed by certain type of field technician. A diagnostic examination is performed, if at all, at the meter shop by a differently skilled meter test technician. Just as well, the meter testing technician (Mr. Rumsey here) makes certain the meter meets accuracy standards before it is installed, while the field technician makes sure that the meter is running accurately under load, i.e., when all the wiring and other connections are in place. Amcor is flatly wrong in stating that "there is no meaningful distinction between a test of the meter and an inspection to determine if it is accurate." (Amcor Response at 3).~~

D. Testing of the Replaced Meter After its Removal is Highly Relevant

What is highly important and telling here, and as ComEd pointed out in its Cross Motion, is that the Replaced Meter was tested (after its removal and after the installation inspection) and shown to be accurate. (Stip. at 9, para. 36).

Amcor claims, however, that ComEd's accuracy testing of the Replaced Meter in September 2009 after its removal from Amcor's premises is irrelevant. (Amcor Reply at 3). Amcor argues this because the accuracy testing occurred more than four years after the meter's installation. Amcor is wrong and once again, misses the point.

To the contrary, a meter shown to be running accurately both prior to installation and after removal from a customer's premises is highly relevant information.² It is precisely this information of meter accuracy that precludes ComEd from pursuing adjusted billing under Section 410.200 of the Commission's rules. It is also this precise information of accuracy that Mr. Rumsey derived from his test of the Replaced Meter on September

² Amcor appears disingenuous in suggesting that the meter tested anything less than accurate. (Amcor Response at 5). That is because, when it moved to have the Replaced Meter test record be stricken along with equally telling portions of Mr. Rumsey's affidavit, Amcor had knowledge of the test record and what it reported.

24, 2009, which led him to look further into the meter with a diagnostic read that ultimately uncovered the scaling factor error. Further still, it is just this finding of meter accuracy that closes the door on Amcor's claim of a Section 410.155 violation.

III. CONCLUSION

The entirety of the evidence in this proceeding and the arguments of law definitively show that a decision in favor of the Respondent is warranted on the entirety of the complaint filed by Amcor on January 11, 2011. For all the reasons set out above and as presented in ComEd's Cross-Motion for Judgment on the Complaint and Support thereof, Respondent asks the Commission to grant judgment in its favor, i.e., to deny the instant complaint with prejudice.

Respectfully submitted,

Commonwealth Edison Company

By:

A handwritten signature in black ink, appearing to read "Eve Moran" followed by a flourish and the initials "MGL".

Eve Moran

One of Its Attorneys

Eve Moran
128 S. Halsted Street
Chicago, IL 60601
(312)720-5803
Of Counsel and for
Mark L. Goldstein
Law Offices of Mark L. Goldstein
3019 Province Circle
Mundelein, IL 60060

Attorney for Respondent

Dated: November 9, 2012